

## SECTION V – INFORMATIONAL MATERIALS

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# STATES OF GUERNSEY

**July 2011**

As a largely autonomous Crown Dependency of Great Britain, Guernsey continues to strengthen its relationship with the United States and fortify its reputation as a well-regulated jurisdiction dedicated to strict compliance with global standards, international cooperation and exchange of tax information.

The Organisation for Economic Co-operation and Development ("OECD"), which lists Guernsey alongside the United States as having met the internationally agreed standard regarding the exchange of tax information, is conducting peer reviews through its Global Forum to ensure that nations adhere to this standard. Guernsey's first peer review report issued in January gave Guernsey high praise, noting that "Guernsey has made substantive developments in expanding its EOI [exchange of information] network, predominantly since 2006, and this has been combined with the development of a complementary domestic process to manage requests received from its EOI partners."

Also in January, the International Monetary Fund ("IMF") issued its Financial System Stability Assessment of Guernsey, updating its last assessment in 2003. The IMF reports that Guernsey's comprehensive AML/CFT legal framework "provides a sound basis for an effective AML/CFT regime" with powerful laws and regulations to freeze and confiscate assets. The IMF Report also notes that "Sound measures are in place to ensure that legal persons incorporated in the Bailiwick are transparent and that accurate, adequate and current information concerning beneficial ownership is available to law enforcement and other competent authorities." This latest evaluation again confirmed Guernsey's superior international reputation as a well-regulated financial sector. "Financial sector regulation and supervision are of a high standard across all sectors, reflecting enhancements to powers and resources in recent years," the IMF report states.

For nearly a decade, Guernsey and the United States have been working ever closer to promote bilateral and multilateral international tax cooperation and transparency. Both countries have signed, ratified and utilized a Tax Information Exchange Agreement ("TIEA"). Guernsey has signed 24 TIEAs with other nations and many more are in the final stages of negotiation.

Guernsey pledges its continued cooperation with the United States in combating offshore tax evasion, especially as both nations prepare to implement the Foreign Account Tax Compliance Act ("FATCA") enacted by the U.S. Congress in 2010. This law will impose a new withholding tax and information reporting regime on most, if not all, types of foreign financial institutions holding assets of U.S. taxpayers. Guernsey appreciates that FATCA emphasizes reporting and withholding rather than a blacklist approach proposed by some in Congress. Consistent with its long record of cooperating in matters of international tax enforcement and information exchange, Guernsey is prepared to provide whatever information may be requested to assist the Treasury Department and the Internal Revenue Service in drafting guidance to implement FATCA.

Guernsey is also currently reviewing its corporate tax system and is committed to meeting the emerging international consensus on corporate taxation. A key objective of this internal review is to ensure that any revised regime meets the EU Code of Conduct.

*Guernsey is committed to remaining a leader in the international community regarding international cooperation and compliance with global standards.*



# STATES OF GUERNSEY

## Chief Minister's Washington Meetings Yield Major Successes

### Sen. Levin Removes Guernsey From Blacklist Legislation

**13 July 2011**—Guernsey Chief Minister Deputy Lyndon Trott and Chief Executive Mike Brown met this week with numerous Washington officials to continue a dialogue started nearly a decade ago to strengthen ties between the two governments and reinforce Guernsey's reputation as a leader in tax transparency, information exchange and international co-operation.

These meetings continue to produce real results. The latest example was this week's unveiling by Senator Carl Levin (D-Michigan) of a modified bill that no longer mistakenly lists Guernsey as an "offshore secrecy jurisdiction." The Chief Minister has met numerous times with Senator Levin's Chief Investigator and Counsel Bob Roach to discuss Guernsey's well-regulated financial sector, its lack of bank secrecy laws and its co-operative stance on tax information sharing, and to object to the inclusion of Guernsey as a presumed secrecy jurisdiction. "I was delighted to be advised this week that Guernsey would no longer be unfairly blacklisted in the Senator's legislation," the Chief Minister said. "Our continued dialogue with Senator Levin was instrumental in changing the legislation and I thank the Senator and his team for listening to the facts about Guernsey."

Late last year, the Multistate Tax Commission (MTC), an advisory group for the 50 American states, also choose to remove a similar mistaken reference to Guernsey as an unco-operative tax haven in model legislation that it recommends to its state officials. Guernsey officials met with MTC staff several times to bring about this change.

In meetings with Congressional offices and top Administration officials in the Treasury Department and Internal Revenue Service (IRS), Guernsey was warmly welcomed and praised for its continuing efforts to remain at the forefront of international standards. At a meeting with Emily McMahon, the Acting Assistant Treasury Secretary for Tax Policy, and her senior legal advisers, the Treasury officials noted and expressed their admiration for Guernsey's close partnership with the United States and its shared goals on transparency and information sharing.

James Carroll, a top official in IRS' Overseas Operations office, told the Chief Minister that the IRS is "extremely pleased" with Guernsey's record. He cited Guernsey's "phenomenal co-operation" and willingness to meet on a regular basis with the Tax Attaché at the U.S. Embassy in London to ensure the two governments continue to work effectively together.

"The decision to no longer blacklist Guernsey is a major achievement that underscores the importance of having started and continuing the dialogue with politicians and government officials in Washington," the Chief Minister explained. "We are so delighted that our relationship with the United States is not only recognized as important but that it continues to be judged by both governments as a success."

Although there is an on-going political debate over deficit reduction and "debt ceiling" legislation in the United States, the generous time and serious consideration devoted to these meetings by the many Washington officials was impressive.

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**Editor's Note:**

The Chief Minister and Chief Executive met with the following officials this week:

Assistant Treasury Secretary for Tax Policy (Acting) Emily McMahon, Treasury Department  
International Tax Counsel Manal Corwin and Attorney-Advisor Arlene Fitzpatrick

Robert L. Roach, Counsel & Chief Investigator to the Senate Permanent Subcommittee on  
Investigations chaired by Senator Carl Levin (D-Michigan)

Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation

Brad Bailey, Policy Director to Representative Pat Tiberi (R-Ohio), Chairman of the House  
Ways and Means Committee Subcommittee on Select Revenue Measures, and Kara Getz,  
Legislative Director and Tax Counsel to Representative Richard Neal (D-Massachusetts),  
Ranking Member of the House Ways and Means Committee Subcommittee on Select Revenue  
Measures

Jeffrey Ziarko, Senior Economic Policy Adviser to House Ways and Means Committee Ranking  
Member Sander Levin (D-Michigan).

Aharon Friedman Tax Counsel to House Ways and Means Committee Chairman Dave Camp (D-  
Michigan), and Aruna Kalyanam Tax Counsel to Ranking Member Sander Levin (D-Michigan).

James D. Carroll, Program Manager, Exchange of Information and Overseas Operations,  
Internal Revenue Service

Jeff VanderWolk, Tax Counsel to Senate Finance Committee Chairman Max Baucus (D-  
Montana), Nick Wyatt Tax Professional to Senate Finance Committee Ranking Member Orrin  
Hatch (R-Utah) and Alvin Chan, Tax Policy Counsel to Senator Hatch.



**States of Guernsey  
Briefing Materials  
July 2011**



**STATES OF GUERNSEY**





# STATES OF GUERNSEY

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**Deputy Lyndon Trott**

- **Chief Minister of Guernsey**
- **Chairman, Bailiwick of Guernsey Emergency Powers Authority**



Lyndon Trott has extensive corporate governance experience from a broad range of commercial and political environments together with proven strategic thinking skills and delivery record.

He was born in 1964 and was educated at Elizabeth College before training as an Accountant. In 1984 he joined the merchant bank Guinness Mahon & Co. Ltd. (now known as Investec Bank) as assistant Finance Director. In 1986 he moved to the bank's treasury department and had particular responsibility for the bank's foreign exchange trading book. Following secondment to head office in the City of London, Lyndon returned to Guernsey to become a manager in its Guernsey treasury operation.

For nine years, until the summer of 2008, Lyndon was the Financial Controller and Company Secretary of the major firm of Chartered Architects & Chartered Surveyors in the Channel Islands.

In 2000 he was elected to the States of Guernsey at the first attempt and became its then youngest member. Early political responsibilities included trade and industry. In 2004 Lyndon was re-elected and became the Island's first Treasury & Resources Minister.

As a Minister, Deputy Trott was also a Member of the Policy Council and had particular involvement in Guernsey's fiscal and economic reform, which resulted in substantial changes to the Island's corporate tax regime.

In May 2008, Lyndon was elected Chief Minister of the Island of Guernsey, a position he will hold until 2012. As Chief Minister his role involves chairing the Island's Policy Council which comprises 11 members – the Chief Minister and 10 Ministers. Each Minister is responsible for one of the 10 Guernsey Government Departments.

Lyndon has retained his interest in fiscal and economic policy through his Chairmanship of the policy group dealing with such matters. He is also Chair of the External Relations Group, which carries out the Policy Council's functions relating to international agreements and constitutional and external relationships. As Guernsey's senior Ambassador, Lyndon actively engages in external relations and promotes Guernsey on the international stage. He has recently completed the IOD certificate in company direction.



## CHIEF EXECUTIVE OF THE STATES OF GUERNSEY



**MIKE BROWN**

Mike commenced his career in the accounting profession in London and qualified as a Chartered Accountant in 1977. He joined the Guernsey Treasury in 1978. He was later appointed as Deputy States Treasurer and then States Treasurer in 1986 where he had executive responsibility for all governmental finances including the annual budget and the Island's currency.

In 1993 he was promoted to Chief Executive of the States of Guernsey and head of the Island's Civil Service. Since that time Mike has had lead executive responsibility for international relations particularly focussing on international tax issues. He played a lead role in the discussions on the EU Tax Package and in particular the Directive on Taxation of Savings, which included the negotiation of bilateral tax agreements with all EU Member States.

In parallel Mike has also represented Guernsey in discussions with the OECD Secretariat which resulted in an agreement with the OECD in 2002 that Guernsey was recognised as a cooperative jurisdiction.

Mike continues to be involved in overseeing discussions with other jurisdictions on TIEAs. To date Guernsey has signed 23 TIEAs with many more in negotiation. As a result of this work Guernsey was placed on the 'white list' top tier of jurisdictions in the OECD progress report on the jurisdictions that have implemented the internationally agreed standard which was initially published on 2<sup>nd</sup> April 2009 following agreement at the G20 London Summit.

As Chief Adviser to the States of Guernsey Policy Council he has particular involvement in ongoing Fiscal and Economic Reform as well as taking the executive lead on a Fundamental Spending Review for the Island.



## **BACKGROUND INFORMATION ON GUERNSEY**

### **a. GEOGRAPHY**

Guernsey is situated in the English Channel about 30 miles from the French coast and 70 miles to the south of England. The Island covers an area of 24 square miles and has a population of about 62,000.



### **b. HISTORY**

The Island's links to the British Crown dates from a time when it formed part of the Duchy of Normandy. In 1066, William, Duke of Normandy (The Conqueror) also became King of England and although the Duchy lands were later lost by King John to become incorporated into the then Kingdom of France in 1204, Guernsey remained loyal to the British Crown. That loyalty has remained to the present day.

### **c. CONSTITUTIONAL STATUS AND GOVERNMENT**

Guernsey is a dependency of the British Crown (being neither part of the United Kingdom nor Great Britain) and enjoys full independence, except for international relations and defence, which are the responsibility of the Crown through the United Kingdom Government. It has its own parliament called the States of Deliberation.

The Crown retains ultimate responsibility for the good governance of the Bailiwick acting through the Privy Council. The United Kingdom's Secretary of State for Justice is the member of the

Privy Council primarily concerned with the affairs of the Island and is the channel of communication between the Bailiwick, the Crown and the United Kingdom Government.

The Island is not represented in the United Kingdom Parliament and Acts of Parliament do not apply automatically to it.

Guernsey's formal special relationship with the European Union (EU) is set out in Protocol 3 to the United Kingdom's Treaty of Accession. The effect of this Protocol is that the Island is within the Common Customs Area and the Common External Tariff of the European Community, and consequently enjoys access to Member States for physical exports of agricultural and industrial products without tariff barriers. However, the remaining provisions of the EU Treaties do not apply to Guernsey and therefore for all purposes other than customs it is effectively a "third country".

The States of Deliberation is Guernsey's legislative assembly. It is comprised of the Bailiff (Chief Judge) as ex-officio Presiding Officer, 45 People's Deputies, 2 Representatives of the States of Alderney, and the 2 Law Officers of the Crown.

The People's Deputies are elected by universal adult suffrage. The Island is divided into seven constituencies, each electing either six or seven members. The Alderney representatives are elected annually by the States of Alderney. The States of Deliberation sit for a term of four years after which there is a general election, the next of which is due in April 2012.







*Guernsey:*  
*Cooperative, Transparent and Well-regulated*  
**Briefing Paper**

July 2011

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STATES OF GUERNSEY

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## **GUERNSEY: COOPERATIVE, TRANSPARENT AND WELL-REGULATED**

### **Introduction**

The purpose of this aide memoire is to summarise the constitutional status of Guernsey and to demonstrate through reference to objective, attributable assessments its position as a cooperative, transparent and well-regulated financial centre committed to maintaining international financial stability and preventing financial crime.

### **Background information: political and legal framework<sup>1</sup>**

Guernsey is the principal Island of the Bailiwick of Guernsey<sup>2</sup>, a British Crown Dependency. It has never been a colony or a British dependent or overseas territory and its status constitutionally is, and always has been, distinctly different from that of the British Overseas Territories<sup>3</sup>. Guernsey has its own directly-elected legislative assembly, the States of Deliberation, comprising 47 independent members<sup>4</sup>, and its own administrative, fiscal and legal systems. Its government, the States of Guernsey, is principally conducted through 10 Government Departments<sup>5</sup> overseen by the Policy Council, constituted by the Chief Minister and the 10 Ministers. Guernsey's right to raise its own taxes is a long-established constitutional principle.

### ***Relationship with the United Kingdom***

Guernsey is not, and never has been, represented in the UK Parliament, which therefore does not legislate on behalf of Guernsey without first obtaining the consent of Guernsey's administration. The extension to Guernsey of an Act of Parliament by Order in Council is occasionally requested, but the usual practice is for the States of Deliberation, which is, and always has been, legislatively independent from the United Kingdom with full competence to legislate for the Island's insular affairs, to enact its own legislation. Primary legislation ("Laws") requires Royal Sanction from Her Majesty in Council ("the Privy Council").

The British Crown acts on behalf of Guernsey through the Privy Council on the recommendations of Ministers of the UK Government in their capacity as Privy Counsellors. It has ultimate responsibility for the good government of Guernsey<sup>6</sup>. The UK Ministry of Justice acts as the point of contact between Guernsey and the Crown, eg, for the purpose of obtaining Royal Sanction for Laws, but is not otherwise involved in Guernsey's internal affairs. The Judicial Committee of the Privy Council is Guernsey's final appellate court.

### ***Relationships internationally***

Guernsey is a territory for whose external relations the United Kingdom is responsible. Recently, Guernsey has increasingly acted internationally on its own behalf<sup>7</sup>, particularly in relation to matters for which it has complete autonomy, and the UK Government has recognised the appropriateness of

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<sup>1</sup> See generally Ogier, *The Government and Law of Guernsey*, 2005. Further information about Guernsey is available at <http://www.gov.gg/ccm/navigation/about-guernsey/>.

<sup>2</sup> It also includes the separate jurisdictions of Alderney and Sark. There is uniform Bailiwick-wide regulation of financial services. Sark is a separate jurisdiction for taxation purposes and has no law relating to companies.

<sup>3</sup> The largest are Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, and Turks and Caicos Islands.

<sup>4</sup> There are no political parties in Guernsey.

<sup>5</sup> Each led by a Minister with 4 voting members drawn from the States of Deliberation, plus up to two non-voting non-States members.

<sup>6</sup> For further information on the constitutional position see the *Report of the Royal Commission on the Constitution 1969-1973* (the Kilbrandon Report: Cmnd. 5460).

<sup>7</sup> For example, cooperation agreements with the 27 EU Member States (in relation to Directive 2003/48/EC on taxation of savings income) and agreements for the exchange of information relating to tax matters.

Guernsey further developing its international identity<sup>8</sup>. The United Kingdom is also responsible for Guernsey's defence.

Guernsey's formal relationship with the EU is a special one, limited to ensuring the implementation of the arrangements contained in Protocol 3 to the 1972 UK Act of Accession<sup>9</sup>. Consequently, the majority of Directives are not automatically binding upon Guernsey and, as far as financial services are concerned, Guernsey is a third country. Nonetheless, Guernsey voluntarily implements appropriate EU laws and meets the international standards on which they are based.

#### Taxation policy

Taxes in Guernsey are levied on the basis of adequately funding public services and ensuring that Guernsey's economy remains strong. In Guernsey the Director of Income Tax is responsible for administering legislation on Income Tax, Dwellings Profits Tax<sup>10</sup> and the retention tax in respect of savings income. Guernsey does not apply Value Added Tax (or GST), but does have a range of different indirect taxes and duties.

The personal Income Tax rate is 20%. From 1 January 2008, the standard rate of Income Tax for companies is 0%. For profits of licensed institutions derived from the carrying on of "banking business"<sup>11</sup> and any other company in the business of providing or making available credit facilities, there is an intermediate rate of 10%. For profits of regulated activities of Guernsey utilities and income from Guernsey land and buildings, there is a higher rate of 20%. Guernsey resident shareholders are taxable on the income of companies in which they have a beneficial interest not only on actual distributions but also on specified deemed distributions. These measures were introduced<sup>12</sup> to fulfil Guernsey's commitment on rollback/standstill under the EU Code of Conduct on Business Taxation.

In October 2009 it was communicated that several European Union Members States had issues with the 'zero/10' corporate tax regimes as they stood. While Guernsey's regime is not under review by the EU Code Group our response was pragmatic, constructive and clear: namely to conduct our own review allowing all options to be considered. The review has five key objectives, that any regime for Guernsey must be: competitive; internationally acceptable; sustain the economy; be simple and straightforward; and give rise to reciprocal benefits. These objectives are being taken into consideration when evaluating the best course of action for Guernsey and have remained constant despite the continuing uncertainty surrounding the EU Code Group review process during the last 18 months.<sup>13</sup>

#### Cooperation

<sup>8</sup> See *Framework for developing the international identity of Guernsey*, 18 December 2008 [Annex 1].

<sup>9</sup> Article 299(6)(c), EC Treaty – involving applying the rules on customs matters and quantitative restrictions.

<sup>10</sup> Designed to prevent speculation on the property market. There is no capital gains tax in Guernsey, nor are there other taxes on capital.

<sup>11</sup> "Banking business" is defined in the Fourth Schedule to the Income Tax (Guernsey) Law, 1975, as amended as "*business carried on by a bank that is a licensed institution under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 and any business that, in the usual course of its business provides or makes available credit facilities*".

<sup>12</sup> See policy explanation on identification of "harmful" tax measures and response set out in the Report in Billet d'État XI of 2006 (<http://www.gov.gg/ccm/policy-and-hr/billets--resolutions/2006/billet-detat-xi-2006.en>). The Income Tax (Guernsey) Law, 1975, as amended, is available at <http://www.gov.gg/ccm/navigation/income-tax/income-tax-legislation/income-tax--guernsey--law-1975/>.

<sup>13</sup> See <http://www.gov.gg/ccm/general/chief-minister-statement-on-corporate-tax-review---29-june-2011.en>

*Tax information exchange agreements (TIEAs)*

On 21 February 2002, Guernsey entered into a political commitment to the OECD's principles of effective exchange of information<sup>14</sup>. Guernsey signed its first TIEA, with the United States, on 19 September 2002<sup>15</sup>. It has been fully operative since 2006. Guernsey has subsequently concluded TIEAs with the Netherlands (25 April 2008), the seven Nordic Council countries (Denmark, the Faroes, Finland, Greenland, Iceland, Norway and Sweden: 28 October 2008), the United Kingdom (20 January 2009), France (24 March 2009), Germany (26 March 2009), Ireland (26 March 2009) New Zealand (21 July 2009), Australia (10 October 2009), Portugal (9 July 2010), San Marino (29 September 2010), Greece (8 October 2010), China (27 October 2010), Romania (17 January 2011), Canada (19 January 2011), South Africa (21 February 2011), Indonesia (27 April 2011) and Mexico (27 June 2011)<sup>14</sup>. The signing of each TIEA has resulted in positive comments being made about Guernsey<sup>16</sup>. Guernsey is actively pursuing its TIEA programme with other countries with a view to finalising agreements as soon as practicable.

On 2<sup>nd</sup> April 2009, following the G20 London Summit, the OECD provided a detailed report on progress made by financial centres around the world towards implementation of an internationally agreed standard on exchange of information for tax purposes, listing Guernsey as a jurisdiction that has substantially implemented that standard<sup>17</sup>.

On 27<sup>th</sup> January 2011, the Global Forum on Transparency & Exchange of Information for Tax Purposes confirmed that Guernsey had not only followed through its 2002 commitment to observe the OECD principles on transparency and exchange of information for tax purposes, but had made substantive developments in expanding its exchange of information network<sup>18</sup>. The Phase 1 report also confirmed that Guernsey had in place all the necessary legal and regulatory powers to ensure it can meet the internationally agreed standard on obtaining and exchanging information for tax purposes. The Island is scheduled to undergo a Phase 2 review in 2012 where the review team will look at the practical implementation of the exchange of information process.

Guernsey currently has two double tax arrangements: with the United Kingdom, signed in 1952, and with Jersey, signed in 1955. The agreements provide for the exchange of information in order to prevent fiscal evasion or avoidance. Accordingly, for many years Guernsey has been providing information from its tax files to the UK tax authorities, both spontaneously and upon request.

*Directive 2003/48/EC on taxation of savings income (EUSD)*

Guernsey has bilateral agreements with all 27 EU Member States implementing measures equivalent to those binding the Member States between themselves. Guernsey chose to apply a retention tax unless the EU resident in question has instead opted for provision of information<sup>19</sup>. On 24<sup>th</sup> November 2010 Guernsey legislated to give financial institutions a window from 1<sup>st</sup> January 2011 to 1<sup>st</sup> July 2011 for moving to automatic exchange of information<sup>20</sup>.

<sup>14</sup> See letter at <http://www.oecd.org/dataoecd/61/13/2067884.pdf>.

<sup>15</sup> Total of 24 TIEAs signed to date (10 with members of the G20 group of economies) See [http://www.oecd.org/document/7/0,3343,en\\_2649\\_33745\\_38312839\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/7/0,3343,en_2649_33745_38312839_1_1_1_1,00.html) for TIEA texts.

<sup>16</sup> See, for example, the statement of Treasury Secretary Paul O'Neill on the signing of the US TIEA (<http://www.treas.gov/press/releases/po3441.htm>) and the comment of the OECD's Jeffrey Owens on the signing of TIEAs with the seven Nordic countries (<http://www.gov.gg/ccm/treasury-and-resources/press-releases/2008/guernsey-signs-tax-information-exchange-agreements-with-nordic-countries.en>).

<sup>17</sup> See [http://www.oecd.org/document/57/0,3343,en\\_2649\\_33767\\_42496569\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/57/0,3343,en_2649_33767_42496569_1_1_1_1,00.html).

<sup>18</sup> See [http://www.oecd.org/document/42/0,3746,en\\_2649\\_201185\\_46894058\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/42/0,3746,en_2649_201185_46894058_1_1_1_1,00.html)

<sup>19</sup> In respect of 2007, £16 million was retained by Guernsey paying agents (distributed 75% to Member States and 25% to Guernsey through retention) and some 18,000 items of information were provided.

<sup>20</sup> See <http://www.gov.gg/ccm/policy-and-hr/billets-resolutions/2010/november/billet-detat-xxiii-2010-november.en>



In January 2011, Guernsey was given a category 1 listing by UK HM Revenue and Customs for tax information exchange<sup>21</sup>.

#### *Other cooperation*

The European Convention on Mutual Legal Assistance 1959 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime 1990 have both been extended to Guernsey<sup>22</sup>.

Mutual legal assistance is provided by the Attorney General (H.M. Procureur) under a range of Guernsey Laws<sup>23</sup>. Between 1999 and 2007 over 90 requests for information specifically related to taxation matters were received, of which 46 were from the UK, 28 from other EU Member States, 7 from the US and 9 from elsewhere. In 2008, there were 34 requests of all types, of which just one failed to satisfy the criteria under Guernsey law for rendering assistance, and in four other instances there was either no evidence available within the jurisdiction to transmit in response or the person for service of process could not be located. Guernsey does not approach requests to see if they can be rejected but rather offers assistance to other jurisdictions to enable them to perfect their requests so they comply with the form required by the relevant Guernsey Laws.

Guernsey's Financial Intelligence Service is a member of the Egmont Group of Financial Intelligence Units. It receives Suspicious Transaction Reports and, in 2009<sup>24</sup> and 2010, there were 627 and 673 disclosures respectively. In those years, 532 and 769 requests for assistance were received of which 61% and 48% respectively came from outside the Bailiwick.

#### Transparency

Guernsey has never had banking secrecy and its law does not perpetuate a regime of banking secrecy. Like in the UK, general principles of Guernsey law preserve the confidentiality of information properly regarded as private. Against such due respect for privacy, however, must be balanced compliance with domestic law provisions requiring persons to divulge information to relevant authorities (eg, the Director of Income Tax has extensive information-gathering powers<sup>25</sup> and the Guernsey Financial Services Commission has wide-ranging powers of supervision and investigation). Relevant authorities in Guernsey then share appropriate information with partners internationally.

Guernsey has introduced a new statute on companies (the Companies (Guernsey) Law, 2008), in force since 1 July 2008 (see information in Annex 2). This Law further enhances accessibility to relevant information by the public and law enforcement personnel and reinforces the position of the financial

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<sup>21</sup> See <http://www.hmrc.gov.uk/news/offshore-penalties.htm>

<sup>22</sup> Guernsey has also formally requested extension to it of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997, the UN Convention on the Suppression of Terrorist Financing 2000 and the UN Convention on Corruption 2003.

<sup>23</sup> These include: Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991; Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996; Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999; Drug Trafficking (Bailiwick of Guernsey) Law, 2000; and Criminal Justice (International Co-Operation) (Bailiwick of Guernsey) Law, 2001, all of which are accessible from <http://www.guernseylegalresources.gg/ccm/navigation/orders-in-council/guernsey---bailiwick/c/crime-and-criminal-justice/>.

<sup>24</sup> For more information see: <http://www.guernseyfiu.gov.gg/ccm/portal/>

<sup>25</sup> See Income Tax (Guernsey) Law, 1975, Part VIA (inserted by the Income Tax (Guernsey) (Amendment) Law, 2005) (see footnote 12 for weblink).

sector regulator, to which information on the beneficial owners of companies was provided prior to the commencement of the 2008 Law and the establishment of the Guernsey Registry.

### Regulation

Guernsey is committed to compliance with established international standards on regulation and in ensuring the highest standards of criminal justice. This commitment includes the standards established by the Financial Action Task Force on Money Laundering (FATF), the Basel Committee on Banking Supervision, the International Organization of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS) and the Offshore Group of Banking Supervisors (OGBS).

The Guernsey Financial Services Commission (GFSC) is a unitary regulatory body, responsible for the regulation of banks, insurers and insurance intermediaries, collective investment funds, investment firms, trust companies, company administrators and professional company directors providing directorship services by way of business in Guernsey<sup>26</sup>. Each of the sectoral regulatory Laws under which the GFSC acts<sup>27</sup> contains minimum criteria for obtaining and retaining a licence to conduct business<sup>28</sup> and powers to obtain information and documents, to conduct investigations and to take appropriate enforcement action. In 2001, Guernsey was also one of the first jurisdictions to introduce a full regulatory regime for trust and company service providers.

The GFSC is fully committed to effective cooperation and information exchange. Although the GFSC has 15 specific Memoranda of Understanding with international partners<sup>29</sup>, the Laws under which it operates provide it with wide powers to obtain supervisory information on behalf of foreign supervisory authorities and to disclose it to them. In addition, the GFSC has the ability to provide third parties with information for the purpose of preventing, detecting, investigating and prosecuting financial crime. The GFSC readily provides assistance to foreign authorities.

The functions of the GFSC include the function of countering financial crime and the financing of terrorism. It administers anti-money laundering and combating of terrorist financing regulations and rules which apply to financial services businesses (which in Guernsey include trust and company service providers) and firms of lawyers, accountants and estate agents. All of these entities are subject to on-site inspections. Guernsey's AML/CFT framework meets the standards issued by the FATF and businesses covered by the framework are required to identify and verify beneficial owners and other underlying principals to business relationships and transactions. This means, for example, that information on the beneficiaries of trusts is held in Guernsey and can be obtained by the competent authorities. Guernsey

<sup>26</sup> See the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended (<http://www.guernseylegalresources.gg/ccm/legal-resources/laws/financial-services/financial-services-commission-bailiwick-of-guernsey-law-1987-consolidated-text.en>).

<sup>27</sup> Principally the Banking Supervision (Bailiwick of Guernsey) Law, 1994; the Insurance Business (Bailiwick of Guernsey) Law, 2002; the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002; the Protection of Investors (Bailiwick of Guernsey) Law, 1987; and the Regulation of Fiduciaries, Administration Businesses, and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (all as amended and accessible from <http://www.guernseylegalresources.gg/ccm/navigation/orders-in-council/guernsey---bailiwick/f/financial-services/>).

<sup>28</sup> Covering, eg, integrity and skill; owners and directors must be fit and proper; the "four eyes" principle; an appropriate mix of executive and non-executive directors; and business to be conducted in prudent manner.

<sup>29</sup> Australia's Australian Securities and Investments Commission; Belgium's Commission Bancaire et Financière; Dubai Financial Services Authority; France's Autorité des Marchés Financiers; Hong Kong Securities and Futures Commission; Italy's Commissione Nazionale per le Società e la Borsa; Isle of Man Financial Supervision Commission; Jersey Financial Services Commission; Malta Financial Services Authority; the Netherlands' De Nederlandsche Bank NV; Financial Services Board of the Republic of South Africa; the UK Financial Services Authority; the UK International Stock Exchange; United States Commodity Futures Trading Commission; and the US Federal Deposit Insurance Corporation.

was at the forefront of introducing an AML/CFT framework for trust and company service providers in 2000. Guernsey is regarded by HM Treasury in the United Kingdom as having AML/CFT measures comparable to those in the United Kingdom. HM Treasury also issued a statement in 2008 which advised that it considers Guernsey to have AML/CFT standards equivalent to the EU<sup>30</sup>.

The GFSC is a member of IOSCO and is a signatory to the IOSCO Multilateral Memorandum of Understanding (MMoU). The GFSC is a founder member of the IAIS. The Director General of the GFSC sits on the executive committee of the IAIS and one of the GFSC's Directors is chairman of the IAIS working group responsible for the IAIS MMoU. The GFSC is also a member of the Enlarged Contact Group on the Supervision of Collective Investment Funds, the OGBS and the Offshore Group of Insurance Supervisors.

#### *External assessment*

A Review of Financial Regulation in the Crown Dependencies was commissioned by the Home Secretary resulting in a comprehensive Report to Parliament in November 1998<sup>31</sup>. Guernsey's regulatory, anti-money laundering and counter terrorist financing framework was assessed by the IMF in its October 2003 Report to have a high level of compliance for each of the international standards against which the Bailiwick was judged: the Basel Core Principles for Effective Banking Supervision; the Insurance Core Principles of the IAIS; the Objectives and Principles of Securities Regulation of IOSCO; and the then FATF 40+8 Recommendations<sup>32</sup>. Guernsey's legal framework for company and trust service providers was also found by the IMF to be fully consistent with the OGBS Statement of Best Practice for Company and Trust Service Providers.

A further assessment by the IMF was undertaken in 2010 and in January 2011 it published six evaluation reports<sup>33</sup> which recognise and commend the high standards of financial regulation, supervision and stability that Guernsey has developed and put in place along with a robust criminal justice framework. The ratings which Guernsey received for its regime to counter money laundering and terrorist financing in particular were outstanding, and are better than those awarded to any other jurisdiction in the world to date

A review of British offshore financial centres was announced in the Pre-Budget Report of the UK Chancellor of the Exchequer in November 2008. The Report was published on 29<sup>th</sup> October 2009<sup>34</sup> and emphasised the significance that Guernsey plays in financial flows into the City of London.

Guernsey has qualified intermediary status following US Internal Revenue Service approval of Guernsey's "know your customer" provisions for the purposes of its rules on withholding tax<sup>35</sup>.

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<sup>30</sup> See [http://www.hm-treasury.gov.uk/fin\\_crime\\_equivalence.htm](http://www.hm-treasury.gov.uk/fin_crime_equivalence.htm).

<sup>31</sup> Cm 4109 (commonly referred to as "the Edwards Report") is available at <http://www.archive.official-documents.co.uk/document/cm41/4109/4109.htm>. The Guernsey Finance Centre is covered in detail in Part III.

<sup>32</sup> The full text of the IMF Report is available at <http://www.imf.org/external/pubs/ft/scr/2003/cr03364.pdf>. In 2000, there had also been the FATF review to identify non-cooperative countries and territories, the Financial Stability Forum (FSF) assessment of offshore finance centres and whether their regimes could adversely affect global financial stability (which assessed Guernsey as a cooperative jurisdiction with a high quality of supervision adhering to international standards: [http://www.fsforum.org/publications/r\\_0004b.pdf?noframes=1](http://www.fsforum.org/publications/r_0004b.pdf?noframes=1)) and the OGBS mutual evaluation of the anti-money laundering system in Guernsey.

<sup>33</sup> Reports available at <http://www.gov.gg/ccm/general/imf-evaluation-reports-commend-guernseys-high-standards.en>

<sup>34</sup> See [http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/indreview\\_brit\\_offshore\\_fin\\_centres.htm](http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/indreview_brit_offshore_fin_centres.htm)



ANNEX 1

Framework for developing the international identity of Guernsey

Following the statement of intent agreed on 11 January 2006, the Chief Minister of Guernsey and the UK Secretary of State for [Constitutional Affairs] have agreed the following principles. They establish a framework for the development of the international identity of Guernsey. The framework is intended to clarify the constitutional relationship between the UK and Guernsey, which works well and within which methods are evolving to help achieve the mutual interests of both the UK and Guernsey.

1. The UK has no democratic accountability in and for Guernsey which is governed by its own democratically elected assembly. In the context of the UK's responsibility for Guernsey's international relations it is understood that
  - The UK will not act internationally on behalf of Guernsey without prior consultation.
  - The UK recognises that the interests of Guernsey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of Guernsey can be expected to reflect the fact that the UK's membership of the EU only extends to Guernsey in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.
2. Guernsey has an international identity which is different from that of the UK.
3. The UK recognises that Guernsey is a long-standing, small democracy and supports the principle of Guernsey further developing its international identity.
4. The UK has a role to play in assisting the development of Guernsey's international identity. The role is one of support not interference.
5. Guernsey and the UK commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship.
6. International identity is developed effectively through meeting international standards and obligations which are important components of Guernsey's international identity.
7. The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account by Guernsey developing its own position.
8. The activities of the UK in the international arena need to have regard to Guernsey's international relations, policies and responsibilities.

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<sup>35</sup> See <http://www.irs.gov/businesses/international/article/0,,id=96618,00.html> and <http://www.irs.gov/pub/irs-trty/qiattachguernsey.pdf>, as also confirmed in the preamble of the US-Guernsey TIEA (see footnote 13 for weblink).



9. The UK and Guernsey will work together to resolve or clarify any differences which may arise between their respective interests.
10. Guernsey and the UK will work jointly to promote the legitimate status of Guernsey as a responsible, stable and mature democracy with its own broad policy interests and which is willing to engage positively with the international community across a wide range of issues.

ANNEX 2

**THE COMPANIES (GUERNSEY) LAW, 2008**

The Companies (Guernsey) Law, 2008 establishes a new electronic registry of company information which is available online at [www.guernseyregistry.com](http://www.guernseyregistry.com).

Information available from the Guernsey Registry

- The memorandum and articles of **all** Guernsey companies;
- The identity of the directors of **all** Guernsey companies, which includes their residential address or a service address (where a director uses a service address then the residential address must be provided to the Registrar – this is largely the same as the position in the UK under Part 10 of the *UK Companies Act 2006*);
- Information on location of the company's Registered Office, which must be situated in Guernsey;
- The identity of the resident agent (see below) of the company which must be either a regulated Corporate Services Provider or a locally resident individual director;
- A variety of other company information is also available at that website.

Information held at the Registered Office

All Guernsey companies must have a registered office in Guernsey. The company must keep a large amount of information at its registered office including the following information:

- Its accounting records and its annual accounts;
- Its shareholder register which must be available for inspection by any person for a proper purpose.

(These provisions are largely the same as in Chapter 2 of Part 8 of the *Companies Act 2006*.)

Company formation

The **only** persons who are permitted to form Guernsey companies are Corporate Service Providers who hold a full fiduciary licence under the *Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000*, meaning:

- Corporate Service Providers are required to comply with all Anti-Money Laundering/Controlling the Financing of Terrorism requirements (AML/CFT).
- In order to comply, identification of the beneficial owner of the company and complying with all other necessary Know Your Customer obligations are required.

Beneficial Ownership

The Law introduces what is believed to be a **world first** with respect to identifying the beneficial ownership of Guernsey Companies – all Guernsey Companies (except for listed companies, collective investment funds and a small number of “publicly held” companies) **must appoint a resident agent**, who must be either a fiduciary licence holder regulated under the 2000 Fiduciaries Law or a locally resident individual director.

The resident agent is under a duty to identify the beneficial owner of that company. Once identified the resident agent must record the following information about the **beneficial owner**:

- His full name;
- His usual residential address;
- His nationality; and
- His date of birth.

The resident agent must provide this information on request to the following persons:

- HM Procureur (Attorney-General);
- The Guernsey Financial Services Commission;
- A Police Officer; and
- A customs officer.

The effect is that under the Law, law enforcement personnel and the financial services regulator have the power to identify the beneficial owners of companies incorporated in Guernsey. This information may also be exchanged with other jurisdictions in accordance with mutual legal assistance procedures. Guernsey does not, and has never allowed, Guernsey companies to issue "bearer shares" (thereby complying with recommendation 33 of the FATF 40+9 Recommendations).

#### Future Developments

The Registrar of Companies is currently in discussions about Guernsey participating in the European Business Registry (see: [www.ebr.org](http://www.ebr.org)) from June 2009, with a view to becoming a distributor from November 2009. This is a project to provide a single website at which anyone can access information on companies in all EBR participating jurisdictions.

#### Compliance with European Directives

The authorities in Guernsey also review and implement EU Directives where necessary to comply with international standards as well as to ensure that Guernsey's regulatory regime remains compatible with European Union standards. Two areas of direct relevance to company law are:

- the Statutory Audit Directive (2006/43/EC); and
- the Takeovers Directive (2004/25/EC).

In both cases, the Guernsey authorities are working closely with the appropriate bodies in the UK and the EU towards implementing those Directives into Guernsey's domestic law.





# POLICY COUNCIL

## THE STATES OF GUERNSEY

POLICY COUNCIL

MEDIA RELEASE – 27 JANUARY 2011

FOR IMMEDIATE RELEASE

**Development of Guernsey's transparency and exchange of information commitment endorsed by independent international forum**

In a report published today, the Global Forum on Transparency & Exchange of Information for Tax Purposes ("the Global Forum") confirms that Guernsey has not only followed through its 2002 commitment to observe the OECD principles on transparency and exchange of information for tax purposes, but has made substantive developments in expanding its exchange of information network.

The report also confirms that Guernsey has in place all the necessary legal and regulatory powers to ensure it can meet the internationally agreed standard on obtaining and exchanging information for tax purposes.

The Chief Minister, Deputy Lyndon Trott, said:

"I am delighted that, hard on the heels of a very favourable report from the IMF, Guernsey has received this endorsement of its legal and regulatory framework from an international body such as the Global Forum. The report confirms Guernsey's long standing commitment to meeting international standards. It is another independent endorsement that Guernsey is a well regulated, transparent and co-operative member of the international community.

"Guernsey committed to the OECD's principles of transparency and exchange of information for tax purposes in 2002, and this report clearly demonstrates that that undertaking was no hollow exercise. The fact that this report was prepared by our peers in the Global Forum, and has measured Guernsey's system as being equal to some of the largest and most important countries on the planet, acknowledges Guernsey's place in the premier league of financial centres committed to international standards of probity."

The report says:

"Guernsey has made substantive developments in expanding its [exchange of information] network, predominantly since 2006, and this has been combined with the development of a

complementary domestic process to manage requests received from its [exchange of information] partners.”

The Global Forum has been the driving force behind the development and acceptance of international standards on transparency and effective exchange of information for tax purposes. It was created in 2000 and currently consists of 97 member jurisdictions. Guernsey is a full member of the Global Forum. In 2009, the Global Forum produced an ambitious four and a half year Peer Review process, the intention of which is to establish a robust and comprehensive process to monitor and review progress made by jurisdictions towards full and effective exchange of information up to the international standards.

Guernsey is scheduled to undergo a Phase 2 review in 2012 where the review team will look at the practical implementation of the exchange of information process. This will involve the Assessment Team visiting Guernsey and evaluating the effectiveness of how the Income Tax Office obtains information and exchanges it with our Tax Information Exchange Agreement (TIEA) partners.

The Chief Minister, Deputy Lyndon Trott, said:

“I look forward to the Phase 2 Review where I am confident that Guernsey will be given yet another opportunity to demonstrate its strong commitment to meeting its international obligations.”

ENDS

Issued by: Jo Reeve, Principal External Affairs Officer, Policy Council

Direct telephone: 717020

Email: jo.reeve@gov.gg

#### NOTES TO EDITORS

1. The report is published at

[http://www.oecd.org/document/42/0,3746,en\\_2649\\_201185\\_46894058\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/42/0,3746,en_2649_201185_46894058_1_1_1_1,00.html)

2. The Peer Review process consists of two phases.

(i) Phase 1 assesses the legal and regulatory framework of a jurisdiction against 10 essential elements. Guernsey undertook its Phase 1 Review during 2010.

(ii) Phase 2 of the process focuses on the effectiveness of exchange of information. Guernsey's Phase 2 Review is scheduled to take place in 2012.

3. The 10 elements, against which the Phase 1 Review is measured, relate to:



- he availability of information, t
- appropriate methods of accessing the information, by the authorities, and a
- t

he existence of exchange of information mechanisms with other countries. These "exchange of information mechanisms" include, for example, the Tax Information Exchange Agreements ("TIEAs") that Guernsey has been entering into since 2002, and continues to do so. Guernsey's Phase 1 Review was undertaken by an assessment team consisting of 2 members of the Global Forum Secretariat and two expert assessors, one from the Italian Revenue Agency and one from the Inland Revenue Authority of Singapore. The Assessment Team measures the 10 essential elements and scores them as:

- e
- lement in place, t
- he element is in place, but certain aspects of the legal implementation of the element need improvement, t
- t
- he element is not in place, and t
- t
- he element is not assessed ( which may be necessary if, for example, the Assessment Team did not consider it was in a position to make an evaluation without carrying out the Phase 2 Review.)

4. Guernsey's Phase 1 Review found:

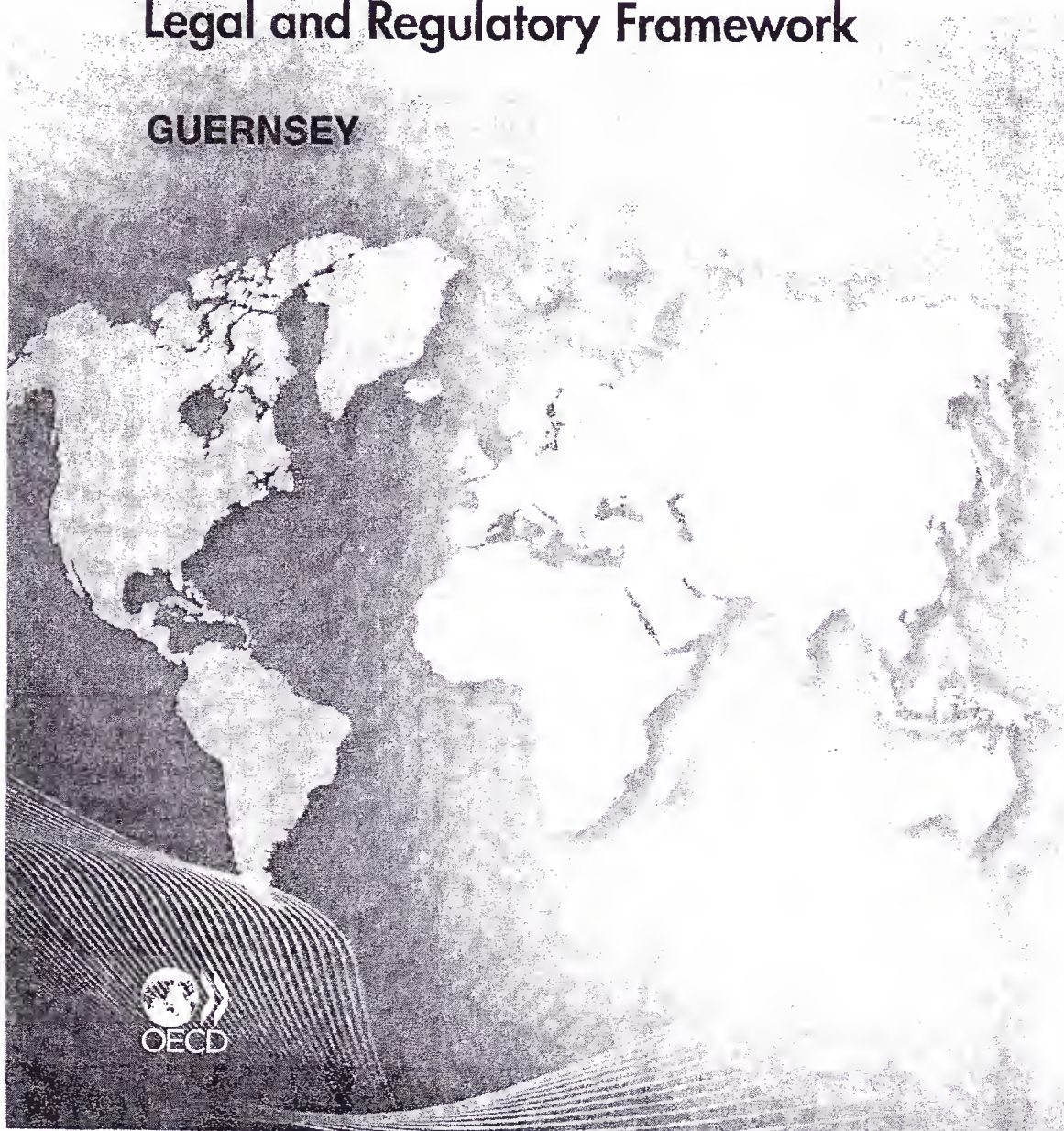
- t
- he element was in place in relation to 8 of the 10 essential elements, t
- he element was in place, but certain aspects of the legal implementation of the element needed improvement, for just 1 of the elements, and t
- t
- he remaining element was not assessed.



GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report  
Phase 1  
Legal and Regulatory Framework**

**GUERNSEY**



**Global Forum  
on Transparency  
and Exchange  
of Information for Tax  
Purposes Peer Reviews:  
Guernsey  
2011**

PHASE 1

January 2011  
(reflecting the legal and regulatory framework  
as at July 2010)



This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

**Please cite this publication as:**

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Guernsey 2011: Phase 1: Legal and Regulatory Framework*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing.  
<http://dx.doi.org/10.1787/9789264096851-en>

ISBN 978-92-64-09683-7 (print)  
ISBN 978-92-64-09685-1 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews  
ISSN 2219-4681 (print)  
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: [www.oecd.org/publishing/corrigenda](http://www.oecd.org/publishing/corrigenda).  
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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 90 jurisdictions which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of jurisdictions' legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).

## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Guernsey. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.

2. The Bailiwick of Guernsey is a jurisdiction comprising three self-governing legislatures: Guernsey (including the islands of Herm and Jethou), Alderney and Sark (including the island of Brecqhou). The present report covers the jurisdictions of Guernsey and Alderney, which are effectively a single jurisdiction for taxation purposes. Sark is a separate jurisdiction for taxation purposes and the issue of the implementation of international standards of transparency and exchange of information for tax purposes by Sark is not dealt with in this report but should be considered by the Global Forum.

3. Guernsey's and Alderney's domestic laws establish a satisfactory framework to ensure that relevant ownership, identity, banking and accounting information is available. First, there are obligations imposed directly on companies, partners and trustees to retain and, in some instances, to provide such information to government authorities. This is complemented by obligations imposed through the licensing regime applicable to certain regulated business activities, including most partners, directors, corporate services providers, nominees, trustees and protectors of a trust. Finally, the anti-money laundering regulations, which apply to regulated financial businesses and relevant professionals, create a third layer of requirements to capture relevant information.

4. An oversight agency has been created in the Bailiwick, *i.e.* the Guernsey Financial Services Commission (GFSC) which is responsible for safeguarding compliance with regulatory and anti-money laundering obligations. The GFSC wields an array of enforcement measures over fiduciary licensees, including private warnings, public statements, investigatory



## 8 – EXECUTIVE SUMMARY

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powers, and cancellation of licences. Financial penalties are also available to sanction breaches of obligations.

5. The obligations imposed in respect of accounting records are satisfactory, but the domestic laws do not consistently require the retention of reliable accounting information that includes underlying documentation in all instances. The extent of the applicability of common law duties to this effect should be carefully reviewed in Phase 2. Obligations to retain bank information on all account holders are established as a result of regulatory requirements imposed on banks as well as the Bailiwick's anti-money laundering regime.

6. Domestic laws enacted since 2006 provide the competent authority with powers to require the production of relevant information which include secrecy safeguards and access enforcement tools. Access relies predominantly on the issuance of notices for the production of information, and in some instances a search and seizure warrant may also be issued. Notification rights are also provided for in the access legislation, with appropriate exceptions compatible with effective access.

7. Guernsey has made substantive developments in expanding its EOI network, predominantly since 2006, and this has been combined with the development of a complementary domestic process to manage requests received from its EOI partners.

8. Guernsey's response to the recommendations in this report, as well as the application of the legal framework to the practices of its competent authority will be considered in detail in the Phase 2 Peer Review of Guernsey, which is scheduled for the second half of 2012.

## Introduction

### Information and methodology used for the peer review of Guernsey

9. The assessment of the legal and regulatory framework of Guernsey was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at July 2010, Guernsey's responses to the Phase I questionnaire and supplementary questions, other materials supplied by Guernsey, and information supplied by partner jurisdictions.

10. The assessment was conducted by an assessment team, which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Ms. Valeria Sperandeo from the Italian Revenue Agency, Assessment Directorate, International Division, Exchange of Information Office; Miss Balbir Kaur, senior tax specialist with the Tax Policy & International Tax Division of the Inland Revenue Authority of Singapore; Ms. Renata Fontana and Ms. Gwenaëlle Le Coustumer from the Global Forum Secretariat. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Guernsey.

11. The Terms of Reference break down the standards of transparency and exchange of information into ten essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchanging information. This review assesses Guernsey's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out on pages 71-72 of this report.

10 – INTRODUCTION

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**Overview of Guernsey***Economic context*

12. The Bailiwick of Guernsey consists of a group of islands (Guernsey, Alderney, Sark, Herm, Jethou and Brecqhou) located in the English Channel off the coast of France. It is the 26<sup>th</sup> smallest country in the world with a population of 65 000. English is the official language. The official currency is the Pound Sterling (GBP),<sup>1</sup> in currency union with the United Kingdom.

13. Guernsey's nominal Gross Domestic Product for 2009 was GBP 1,883 million. The service sector of Guernsey makes up 83% of the economy, with the financial sector in particular accounting for about 23% of employment and 55% of total income. Apart from the financial sector, the industrial and agricultural sectors comprise 10% and 3% of the economy, respectively.

*Governance and legal system*

14. As a British Crown Dependency, the Bailiwick of Guernsey is independently administered and is neither a member of the United Kingdom nor of the European Union. The head of State is the Queen, represented by the Lieutenant Governor. The relationship between the Bailiwick of Guernsey and the United Kingdom is based on practice, custom, convention, usage and Statute enacted in Westminster and extended by consent to the Islands. The Bailiwick of Guernsey is also subject to the uncoded constitution of the United Kingdom governing the relationship of the UK with the Crown Dependencies.

15. The Bailiwick of Guernsey is a jurisdiction comprising three self-governing legislatures:

- Guernsey (which includes Herm and Jethou), whose legislature is the States of Deliberation comprising the presiding judge of the Royal Court of Guernsey (the Bailiff) as ex-officio Presiding Officer, 45 elected People's Deputies, two elected Representatives of the States of Alderney as a result of a 1948 tax agreement, and the two Law Officers of the Crown (Sark is not represented therein). The States of Deliberation sit for a term of four years. Powers granted to the States include the power to raise taxes, determine expenditure, and pass legislation, but all bills require the assent of the Queen to become law. Any reference to "Guernsey" in the report covers the island of Herm, unless specifically provided otherwise.

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1. On 31 July 2010, 1 GBP = 1.2 EUR; 1 EUR = 0.83 GBP.

- Alderney, whose legislature is the States of Alderney. Alderney has a legal system separate from Guernsey (*e.g.* with a separate legislation on companies), except for tax purposes (see below).
- Sark (which includes Brecqhou), whose legislature is the Chief Pleas of Sark. Sark has no income tax, no company law (thus no companies are registered or incorporated therein) and no licensed banks (bank operations in Sark are branches of Guernsey banks).

16. Guernsey is the largest and most populous island in the Bailiwick, and the legislative competence of the States of Deliberation is wider than that of the States of Alderney and the Chief Pleas of Sark as it is, for example, able to enact criminal legislation which has effect throughout the Bailiwick. Sark and Alderney are also subject to Guernsey's regime for the regulation of the finance industry by the Guernsey Financial Services Commission (GFSC) and to the Bailiwick's Anti-Money Laundering and the Countering the Financing of Terrorism (AML/CFT) regime.

17. The judicial system is comprised of Magistrates' Courts, and the Royal Court, which is made up of a Bailiff and 16 permanently elected Jurats. The Royal Court of Guernsey is (in both criminal and civil matters) the appellate court for the Court of Alderney and the Court of the Seneschal of Sark, which in criminal matters possess only limited powers to try and punish summary offences. Appeals from the Royal Court are presided over by the Guernsey Court of Appeals. The ultimate court of appeals is the Judicial Committee of the Privy Council. Guernsey also has an Attorney General and a Solicitor General, HM Procureur and HM Comptroller respectively, who serve as legal advisors to the Crown and the States.

### *The taxation system*

18. As a result of a 1948 agreement, Guernsey and Alderney are effectively a single jurisdiction for taxation purposes and Guernsey's income tax legislation<sup>2</sup> applies directly to Alderney. Guernsey has also express power to legislate for Alderney in the area of exchange of information on tax matters. Therefore, the term "Guernsey" used in the following paragraphs covers Guernsey, Alderney and Herm.

19. Sark is an independent jurisdiction for tax law purposes (including exchange of information) and it has no income tax.

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2. The primary legislation governing income tax is the Income Tax (Guernsey) Law, 1975. Jethou, which has a population below 10 individuals, is not covered by the Income Tax Act and this review.



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20. All individuals who are solely or principally resident and companies which are resident in Guernsey are subject to income tax on their worldwide income wherever such income may arise or accrue (section 5 of the Income Tax Law). As regards individuals, residence in Guernsey is triggered by: (a) presence for 91 days or more in a tax year, or (b) presence for 35 days in that year and for 365 days in the four preceding years (section 3).<sup>3</sup>

21. As to companies, residence for tax purposes in Guernsey is determined on the basis of: (a) shareholder voting control; or (b) incorporation, when the company has not been granted an exemption from tax<sup>4</sup> for the year of charge (section 4). Non-resident individuals and companies are subject to limited taxation in respect of their Guernsey-source income (including income derived through a permanent establishment therein) other than bank deposit interest. Persons trading or exercising a profession or business in Guernsey in a partnership are taxed on their separate shares of the partnership income.

22. Up until 2007, companies and individuals who are regarded as residents in Guernsey paid a flat tax rate of 20%. Since 1 January 2008, individuals have continued to pay the 20% income tax while companies have moved into a "zero-ten" corporate tax system, with the company standard tax on income from business, offices, employments, and other sources at 0%; the company intermediate rate, which covers certain income from banking business, at 10%; and the company higher rate including income from trading activities regulated by the Office of the Director General of Utility Regulation and income from the ownership of lands and buildings at 20%.

3. There are two subcategories of residents, which are treated alike for income tax purposes: (a) solely resident when the individual is considered resident in Guernsey during the particular year of charge and not resident elsewhere (*i.e.* the individual does not spend 91 days or more in any other place); and (b) principally resident when the individual is present in Guernsey for 182 days or more in a tax year, or is present for 91 days in that year and for at least 730 days in the four preceding years, or takes up a permanent residence in Guernsey, in addition to meeting the definition of resident and being solely or principally resident in Guernsey in the following year of charge). There is a separate category of residence status when an individual is considered resident but not solely or principally resident in Guernsey. In general, an individual who is resident but not solely or principally resident in Guernsey is chargeable on his worldwide income during the year of charge, unless, within a period of two years immediately after the end of any year of charge commencing after 2008, he elects to pay tax on his Guernsey source income, other than bank interest (subject to a minimum standard charge of GBP 25 000).
4. Under section 40A and the Income Tax (Exempt Bodies) Ordinance of 1989 (Schedules 1 and 2). Since 2008, this exemption has only been available to public collective investment schemes.

23. There are no taxes chargeable upon capital wealth (such as Capital Gains Tax, Inheritance Tax or Gift Tax) in Guernsey. However, there are a number of forms of indirect taxation, such as duties upon alcohol, tobacco and petroleum spirit. There are no general sales, purchases or Value Added Taxes levied.

*The regulatory framework (including the financial sector)*

24. Guernsey's regulatory legislation does not automatically apply either to Alderney or Sark. In order for the civil legislation to be binding throughout the Bailiwick, that legislation must be approved by all three legislatures and then receive Royal sanction.<sup>5</sup>

25. The financial services legislation (including AML/CFT legislation) confers functions on the GFSC which may exercise its legal powers equally in Guernsey, Alderney and Sark due to the fact that the legislation has been approved by all the three legislatures. The GFSC, as the main regulatory authority for the financial sector, is involved in matters concerning banking, insurance, investment, fiduciary business, and other services and administers the related laws. Currently 44 banks in the Bailiwick of Guernsey – most with head offices either in the United Kingdom or Switzerland – are regulated and licensed by the GFSC.

26. On 31 December 2009, there were 661 institutions licensed to carry on investment business, comprising administrators/managers and custodians/trustees of collective investment funds, stock brokers, discretionary and non-discretionary asset managers, investment advisers and one stock exchange. As at that date, there were 276 authorised or registered open-ended collective investment schemes (of which 208 were umbrella or multi-class schemes resulting in a total 1 904 pools of assets) and 608 closed-ended investment schemes (of which 77 were umbrella schemes resulting in a total of 1 223 pools of assets), with total assets amounting to GBP 184 billion.

27. The insurance sector can be broadly divided into two sections: (i) the domestic sector, which includes local insurers, overseas insurers, recognised insurers, and intermediaries who advise on or arrange contracts of insurance in or from within Guernsey; and (ii) the international sector, which includes captive insurers, commercial insurers and life assurance companies who arrange contracts of insurance from within Guernsey, covering international risks.

28. Guernsey trusts are governed by Guernsey customary law (which comprises elements of English common law and Norman customary law). The main authoritative document, the Trusts (Guernsey) Law, 2007, and before that the Trusts (Guernsey) Law, 1989, were codifications of the Guernsey

5. The criminal justice legislation only has to be approved by the States of Deliberation and receive Royal Sanction to be applicable Bailiwick-wide.



## 14 - INTRODUCTION

customary law and contain provisions which are identical in many respects to the English common law. The 2007 Law applies to Guernsey only. Alderney and Herm do not have trusts legislation, thus it is only possible to set up trusts therein under customary law.

*Exchange of information for tax purposes*

29. Guernsey is signatory to 16 Tax Information Exchange Agreements (TIEAs). It is also a signatory to two Double Tax Conventions (DTCs) containing EOI articles that do not meet the international standards. The framework for the exchange of information for tax purposes is overseen by Guernsey's Director of Income Tax, who is Guernsey's competent authority for EOI purposes.

30. A complete list of the TIEAs and DTCs which have been concluded by Guernsey are set out in Annex 2 including their dates of signature and entry into force, as well as the status of EOI agreements which have been concluded but not signed by Guernsey. A complete list of all the legislation and regulations relevant to the exchange of information, as well as non-binding guidance texts, is set out in Annex 3.

31. Since 2005, Guernsey has agreed to implement measures equivalent to those contained in the EU Directive on the Taxation of Savings Income (2003/48/EC). As a result, Guernsey has entered into reciprocal bilateral agreements with each EU Member State.

*Sark, a jurisdiction independent from Guernsey for tax matters*

32. Sark is one of the three self-governing Crown dependencies, which make up the Bailiwick of Guernsey. It is an independent jurisdiction for all civil purposes, including tax law purposes (and exchange of information) and it has no income tax.<sup>6</sup>

33. As a consequence, Guernsey has no power to represent Sark on the international stage and the TIEAs concluded by Guernsey do not apply to Sark. In addition, the powers given to Guernsey's competent authorities to compel the production of information do not apply in relation to Sark. Any jurisdiction wishing to obtain information from Sark would therefore need to approach Sark directly.

6. The position is different for Alderney where in relation to tax matters the position is governed by an agreement of 1948 and the Alderney (Application of Legislation) Law, 1948, under which Guernsey and Alderney comprise a single tax jurisdiction and Guernsey tax legislation has automatic effect in Alderney.

34. As concerns the availability of ownership and identity information, Sark has no company law and thus no companies are registered or incorporated in Sark. In addition, there is no partnership or trust legislation in Sark, thus it is only possible to set up partnerships and trusts therein under customary law. Sark has no banks – branches of Guernsey banks are established in Sark. The regulatory requirements on record keeping as well as the AML/CFT regime overseen by the GFSC are applicable throughout the Bailiwick, including the three full fiduciary licensees currently established in Sark.

35. As a consequence, the present report is not an assessment of the Bailiwick of Guernsey, as it does not cover Sark. It covers the other two entities of the Bailiwick, *i.e.* Guernsey (which includes the island of Herm) and Alderney.

### Recent developments

36. Guernsey has written to all OECD, G20, EU (as well as some other) territories, with which it did not already have a DTC or a TIEA, inviting those territories to enter into negotiations. Negotiations have been held with 12 jurisdictions, and the text of a TIEA has been agreed or substantially agreed. Negotiations with six new jurisdictions are expected to be concluded during 2010. Requests to negotiate TIEAs were declined or have not been responded to by another seven jurisdictions. In addition, there are a number of countries which are considering Guernsey's request to commence discussions on a TIEA or DTC.

37. A forthcoming amendment to the Income Tax Law is going to substitute section 75C(2) and introduce a new procedure under which a review of the request for information received will be made by a member of the Guernsey Tax Tribunal as well as the Director of Income Tax, in order to ensure that the request meets the terms of the TIEA.

38. Future developments include the introduction of the concepts of foundations and limited liability partnerships in Guernsey. Guernsey's legislative assembly has, in principle, approved the introduction of these concepts but the bills are not yet drafted. In addition, the legislative assembly approved substantial amendments to the Limited Partnership (Guernsey) Law, 1995, which will include new structures such as protected cell limited partnerships, and the possibilities of conversions and migrations of limited partnerships.

## Compliance with the Standards

### A. Availability of Information

#### Overview

39. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses Guernsey's and Alderney's legal and regulatory framework on availability of information.

40. In respect of ownership and identity information, the obligations imposed by Guernsey and Alderney on companies, partnerships and trusts are generally sufficient to meet the international standard. These obligations are imposed directly by legislation governing the formation of these entities, as well as customary law, the AML/CFT obligations and licensing requirements imposed on persons performing regulated activities by way of business (such as resident agents, corporate or individual directors, fiduciaries, nominees and financial services businesses). Penalties are generally available to enforce these obligations.

41. The obligations imposed in respect of accounting records are generally satisfactory, with sufficient specificity in respect of the precise information to be maintained. However, requirements for underlying documents and records

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that reflect the details required by A.2.2 of the Terms of Reference are uncertain. For those accounting records which are required to be kept, the obligation exists to retain them for at least five years.

42. In respect of banking information, the combination of the AML/CFT regime and licensing requirements for deposit-taking institutions impose appropriate obligations to ensure that all records pertaining to accounts, as well as related financial and transactional information, are available in Guernsey. In practice, compliance with registration, licensing and AML/CFT requirements is closely monitored by the Guernsey Financial Services Commission (GFSC) through means such as initial (no longer for Guernsey non-cellular companies) and ongoing registration vetting, as well as on-site visits.

**A.1. Ownership and identity information**

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

***Companies (ToR<sup>7</sup> A.1.1)***

43. The Bailiwick of Guernsey has two distinct bodies of company legislation: the Companies (Guernsey) Law, 2008 (Guernsey Companies Law) and the Companies (Alderney) Law, 1994 (Alderney Companies Law), which govern the companies in Guernsey and Alderney respectively.

44. Two broad types of companies exist under Guernsey Companies Law: non-cellular and cellular companies (sections 1-10). The first ones correspond to the types of companies generally available across jurisdictions. The second type involves the cell concept developed in Guernsey to address risk-management concerns of the insurance industry.

- Non-cellular companies:
  - Companies limited by shares, in which the member's liability is limited to the amount unpaid (if any) on their shares. These are the most commonly used companies.
  - Companies limited by guarantee, in which the members enter into an arrangement to guarantee a certain amount of the debts of the company, and liability is limited to the amount of the guarantee. These companies are used primarily by not-for-profit organisations or companies.

7. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

- Companies with unlimited liability, in which the members have unlimited liability.
- Companies with mixed liability, which can have a combination of shareholders, guarantee members and unlimited liability members.
- Cellular companies:
  - Protected Cell Companies (PCCs), and
  - Incorporated Cell Companies (ICCs) and Incorporated Cells (ICs) of the ICCs.

45. In May 2010, Guernsey had 16 039 non-cellular companies (including eight States Regulated Companies)<sup>8</sup> and 449 cellular companies (251 PCC, 32 ICC and 166 IC). The idea of PCCs was first developed in Guernsey in the 1980s and formalised in 1997 to respond to concerns of risk contagions in the insurance industry. A PCC is a single legal entity with separate and distinct cells within it. A cell of a PCC is not a company and cannot contract in its own name; it is the PCC which is the contracting party, in respect of the relevant cell which must be identified. Assets and liabilities in a PCC cell are, by law, segregated from those of other cells and those assets are not available to creditors of other cells in insolvency. By law, a cell does not have access to the assets of the PCC core unless a recourse agreement has been put in place. The concept serves the same purpose as unit trusts.

46. An ICC is a legal entity as are each of the incorporated cells (ICs) associated with it. An ICC and each of its ICs have directors, secretary and registered office in common. Introduced in Guernsey law in 2006, ICCs are seen as versatile structures due to having a lower cost base, which is attractive for start up operations and the ability to “spin off” an IC or convert it into a standalone company. Legal segregation is achieved by the fact that an ICC and an IC are distinct corporate entities.

#### *Information kept by public authorities*

47. Guernsey and Alderney companies are registered with public authorities, which maintain some primary ownership information upon incorporation, as well as the GFSC upon licence application. All companies formed in Guernsey and Alderney are required to register with the Director of Income

8. The term refers to all companies that are regulated by the Office of Utilities Regulation under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. It covers all electricity, telecommunications and postal providers in Guernsey, of which two are wholly owned by the States of Guernsey.



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Tax and to submit tax returns (or claim exemption),<sup>9</sup> but tax files do not contain any ownership information, except where the information is included in financial statements which might accompany tax returns or where the information is required to be provided by a company under the “zero-ten” tax system, in respect of distributions and deemed distributions of the company’s income (section 81B).

### Registration

48. All Guernsey companies must submit the following information to the Registrar for incorporation:<sup>10</sup> (i) registered office’s address in Guernsey (Guernsey Companies Law, section 30; IC and ICC have the same registered office, section 31); (ii) names, addresses and signatures of founder members; particular of the directors (see section 143(4)(b)), who need not be resident in Guernsey; (iii) resident agent (section 485; IC and ICC have the same resident agent, section 484)<sup>11</sup>; and (iv) for companies limited by shares, the number of shares of each founder member (and their class) and the aggregate value of those shares<sup>12</sup> (section 15). The Register of Companies is publicly available and may be searched online or available upon payment of a small fee.<sup>13</sup> The Registrar does not receive information on beneficial ownership of companies.

49. Changes concerning the registered office’s address, director and/or the resident agent must be notified to the Registrar within 14 days (sections 25, 30, 145 and 485). These changes must also be confirmed upon submission

9. All companies formed in Guernsey are regarded as resident in Guernsey for tax purposes, unless they have been granted an exemption from tax under the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989. Since 2008, this exemption has only been available to public collective investment schemes.
10. The Registrar operates under the supervision of the Commerce and Employment Department. The same information must be provided in cases of conversions and amalgamations of companies.
11. As an exception, the listed companies, closed and open ended investment companies or subsidiaries thereof, other GFSC supervised companies (listed under section 530) and States Trading Companies governed by the Companies (Beneficial Ownership) (Guernsey) Regulations, 2008 and the States Trading Companies (Bailiwick of Guernsey) Law, 2001, are not required to have a resident agent.
12. Similarly, in the case of a company limited by guarantee, the memorandum must indicate the guaranteed amount of each member and the maximum number of guarantee members which the company may have.
13. Registrar website: [www.guernseyregistry.com](http://www.guernseyregistry.com). Some information is available free of charge, although for copies of filings and access to company profiles a small fee of between GBP 2 and GBP 25 is charged, depending on the nature of the document.

of an annual validation (sections 234 and 235). The Registrar indicates that in practice between 90% and 95% of companies update their details within the statutory time frames. The Registrar maintains the name of the founder members only, and does not maintain information on subsequent members. The annual validation merely confirms that the company's register of members is current as at 31 December of the year to which the annual validation relates.

50. Alderney companies (522 in 2009) are subjected to similar obligations. They are registered with the Alderney Registrar of Companies, who must receive the name, address and signature of all founder members of the company (section 4). Alderney companies must also submit an annual return to the Registrar (section 37). Unlike in Guernsey's case, Alderney companies are not required to have a resident agent.

51. Alderney companies can only be formed by Advocates of the Royal Court (sections 4, 162 and 163) with the consent of the GFSC. Before giving consent, the GFSC carries out due diligence on the proposed beneficial owners of the company and considers its proposed activities. The GFSC uses both public material and confidential intelligence databases in considering these applications.

52. Since the entry into force of the new Guernsey Companies Law in 2008, companies may only be formed by corporate services providers (CSPs) holding a fiduciary licence in Guernsey<sup>14</sup> and the GFSC no longer receives details of proposed beneficial owners nor undertakes "pre-vetting" on each Guernsey company formation application (except for cell companies).<sup>15</sup> Instead, the GFSC exercises scrutiny over the fiduciary licensees, such as directors (individuals or CSP) and partners of local and foreign companies and partnerships, performing regulated activities by way of business. There is therefore an increased focus on the role of fiduciary licensees as "gatekeepers" when applying for formation.

14. Guernsey Company Law, sections 17(9) and 532; and sections 83(5) and 97(4) as concerns the incorporation or removal of an existing company as a Guernsey company.

15. Cell companies (PCC and ICC) must still first obtain the prior approval of the GFSC (section 10).

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53. Companies (as well as partnerships and trusts) that are charities or non profit organisations (“NPOs”)<sup>16</sup> based in Guernsey,<sup>17</sup> holding assets above GBP 10 000 or annual income above GBP 5 000, and which are not administered, controlled or operated by a fiduciary licensee, are obliged to register on the Register of Charities and NPOs (Schedule 1, section 2(1)), maintained by the Director of Income Tax, in his capacity as Registrar of NPOs (Charities and Non Profit Organization (Registration) (Guernsey) Law, 2008 – “NPO Law”). These entities are obliged to provide identity information on the directors, officers and trustees (but not on beneficiary, settlor and protector); address within the Bailiwick; and details of the purposes and manner in which the assets, funds and income of the organisation are applied or used (Schedule I, section 2(2)). They have to provide annual financial statements and updated information while annually renewing the registration with the Registrar (Schedule I, sections 5, 6 and 8).

54. Foreign companies administered locally are generally not required to be registered, except where there is a specific statutory requirement (such as for financial services businesses), but are covered by the Bailiwick’s AML/CFT regime. A foreign company may apply to the Registrar to be registered as a Guernsey company, by providing a copy of its memorandum of incorporation and disclosing its legal ownership structure (sections 75, 83, and 84, in conjunction with 15). Upon registration, the foreign company will be subject to the same requirements applicable to any Guernsey company, as described above (section 75).

#### Regulated business activities

55. Only persons licensed by the GFSC under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc, Law of 2000 (Fiduciaries Law) may operate a business providing services defined as regulated activities in the Bailiwick, including:

16. Charity means any organisation established for charitable purposes only. NPO means any organisation established (solely or principally) either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity (Charities and Non Profit Organization (Registration) Law, 2008, section 12).
17. New legislation (passed on 28 April 2010) extending this obligation to NPOs located in Alderney is currently awaiting Royal Assent. Until then, registration may occur on voluntary basis.

- company or corporate administration, including the formation, management or administration of companies (as well as partnerships, trusts and other unincorporated bodies); and
- acting as or providing for corporate or individual directors of companies (as well as partnerships and other unincorporated bodies, or corporate or individual trustee or protector of a trust) whether incorporated or established in the Bailiwick or elsewhere.

56. In December 2009, 197 individuals and companies were licensed to perform these functions in Guernsey, a list of whom is available on the GFSC website.<sup>18</sup> They are subject to the regulation, oversight, investigatory and information gathering powers, and enforcement powers of the GFSC.

57. Full fiduciary licences are available to companies or partnerships. When applying for a fiduciary licence, companies (as well as partnerships and other unincorporated bodies, whether incorporated or established in the Bailiwick or elsewhere) must disclose their ownership structure to the GFSC. Where the shares of the applicant are held within a trust, information must be provided on the trust settlor, trustees, beneficiaries, together with a copy of the trust deed. When the applicant belongs to a group, it must provide the GFSC with its group structure. Applicants must also identify any other controller (15% or more of the voting powers in the company or its parent) and changes of controllers (direct or indirect) or partners of the fiduciary licensee must be authorised by the GFSC. Failure to give notice of the change to the GFSC within 14 days is an offence (Fiduciaries Law, sections 14, 21 and 22).

58. Personal fiduciary licences, authorising a restricted range of activities (including acting as individual director, trustee or protector) may be granted to individuals (Fiduciaries Law, sections 4 and 5).

59. Schedule 1 of the Fiduciaries Law sets out the minimum criteria for licensing and includes an obligation for the applicant to demonstrate that it meets the fitness and propriety criteria, which includes understanding of the legal obligations of a resident agent and having in place appropriate AML/CFT procedures. However, none of these obligations will apply when the person performing a regulated activity is not doing so in the course of business or when the activity is exempted under section 3 of the Fiduciary Law, such as acting as director of own company, or a listed company, or a supervised company (or a subsidiary thereof), or an individual director of not more than six companies.

18. GFSC website: [www.gfsc.gg/](http://www.gfsc.gg/).